EXHIBIT B

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:	Mark Johnson, Chair Kate Giard Dave Harbour James S. Strandberg G. Nanette Thompson
In the Matter of the new Requirements of 47 C.F.R. § 51 Related to the FCC Triennial Review Order Interconnection Provisions and Policies	R-03-07

ACS' REPLY COMMENTS

Pursuant to Ordering Paragraph No. 7 in Order No. 1, Alaska Communications Systems ("ACS"), on behalf of the ACS local exchange carriers ("LECs"),[1] hereby files this response to the comments submitted January 12, 2004 and the supplemental information submitted March 19, 2004.

I. INTRODUCTION AND SUMMARY

The FCC's Triennial Review Order directs each state to undergo specific fact finding and analysis to determine whether certain unbundled network elements ("UNEs") should

[1] The four ACS LECs, ACS of Anchorage, Inc., ACS of Fairbanks, Inc., ACS of Alaska, Inc., and ACS of the Northland, Inc., are wholly-owned subsidiaries of ACS.

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be required to be made available by an incumbent LEC ("ILEC") within that state.[2] The D.C. Circuit recently vacated the FCC's Triennial Review Order.[3] The court held that it is for the FCC to determine what "impairment" means and that finding cannot be delegated to the states.[4] In addition, the court vacated the FCC's national impairment findings for mass-market switching and high capacity and dark fiber transport.[5] The court "doubt[ed] that the record supports a national impairment finding for mass market switches" and seriously questioned whether under § 251(c)(3) of the Telecommunications Act the obligation to provide the switching UNE can be upheld.[6] As for the transport market, the court questioned the FCC's narrow, route-specific definition of the "market,"[7] and criticized the FCC for failing to acknowledge the availability of wholesale transport through ILEC special access offerings as relevant to the impairment analysis.[8] The court concluded, "it is hard to see any need for the Commission to impose the costs of mandatory unbundling" of dedicated transport.[9]

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[2] As explained in ACS' initial comments, the Federal Communications Commission ("FCC") is required by statute to implement new Sections 251 and 252, which were incorporated into the Communications Act by the Telecommunications Act. *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996) amending the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* To determine which UNEs an ILEC must make available, the Act requires the FCC to determine (1) as to any proprietary network element, whether access to the UNE is "necessary;" and (2) as to *all* network elements, whether lack of access to the UNE pursuant to Sections 251(c) and 252(d) would "impair" the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer. 47 U.S.C. § 251(d)(2)(A), (B). Both the Supreme Court and the D.C. Circuit were critical of the FCC's impairment standard and broad unbundling rules. Both courts made clear the unbundling obligation under § 251(c)(3) cannot be read without the limiting standards of § 251(d)(2). The Triennial Review Order was the FCC's response to this criticism.

[3] *United States Telecom Ass'n v. FCC*, No. 00-1012 (D.C. Cir. Mar. 2, 2004) ("*United States Telecom Ass'n*").

[4] *Id.* at 18, 61.

[5] *Id.* at 20 (switching); *id.* at 28 (transport).

[6] *Id.* at 20.

[7] *Id.* at 29.

[8] *Id.* at 30-31.

[9] *Id.* at 31.

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In light of the D.C. Circuit's decision invalidating most of the FCC's Triennial Review Order, and in particular vacating the delegation of authority to the states to make the required factual findings, ACS believes that these proceedings should be suspended. There can be no unbundling obligation without an "impairment" finding, and only the FCC can make that finding.[10] If the FCC decides on remand to make some use of the factual findings of the states, it will have to ask the states to tailor their findings to a new standard of "impairment." Even if the D.C. Circuit is reversed by the U.S. Supreme Court, it will be months before a decision, and in the meanwhile it appears that the FCC's rules will be vacated.[11] Therefore, more than half of the states have suspended (or never commenced) impairment proceedings.[12] ACS filed a motion to have the proceedings in this docket stayed pending the FCC decision on ACS' request for extension of the FCC July 2 deadline[13] until there is a final disposition on any petition for rehearing before the D.C. Circuit or until resolution of any petition for *certiorari* to the Supreme Court.[14] We are responding to comments submitted January 12 and supplemental information submitted March 26, however, as required by RCA Order No. 1 in this docket.

According to the FCC, a CLEC is "impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and

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[10] *AT&T v. Iowa Utilities Bd.*, 525 U.S. 366, 387-88 (1999); *United States Telecom Ass'n*, at 18.

[11] *United States Telecom Ass'n*, No. 00-1012, at 22-26, 28, 33.

[12] *See* <http://www.tr.com/online/trodates.htm> (visited Apr. 2, 2004).

[13] The Triennial Review Order requires state commissions to make any impairment findings by July 2, 2004. Triennial Review Order at ¶¶ 527 (circuit switching), 339 (loops), 417 (dedicated transport).

[14] ACS' Motion for Stay of RCA Proceeding Pending FCC Decision on ACS' Request for Extension of July Deadline, Motion for Public Hearing to Consider ACS Motion for Stay and Motion for RCA to Request FCC for Extension of July Deadline, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7(1) (Mar. 10, 2004).

economic barriers, that are likely to make entry into a market uneconomic."[15] For each element as to which the state is required to perform an impairment analysis, the FCC sets forth detailed tests, which ACS described in its initial comments.[16] Under the terms of the Triennial Review Order, the RCA must conduct a granular impairment analysis in strict accordance with the FCC order. The RCA must not require that ACS offer UNEs unless the competitor seeking access would be "impaired."[17]

General Communication, Inc. ("GCI") was the only party in this proceeding to allege any impairment in the three ACS LEC markets at issue.[18] However, in its comments, GCI has not established "impairment" for any of the network elements under the FCC's specific requirements. GCI has not established that it faces substantial economic or operational barriers with respect to any of mass-market switching, inter-office transport or high capacity loops.

GCI attempts to show it would be impaired without access to unbundled switching on the grounds that it currently lacks access to certain loops from its own switches. GCI fails, however, to show why it cannot serve those customers that it does not serve today merely by making some minimal additional investment. GCI is also wrong on the law. Under the applicable impairment standard, GCI does not need access to every loop from its own switches in order to be found unimpaired. Moreover, it is impossible to see how GCI is

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[15] Triennial Review Order at ¶ 7.

[16] Comments of ACS, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7(1), at 12-13, 24-25, 28-29 (Jan. 12, 2004) ("ACS Comments"). Triennial Review Order at ¶ 7 (for each particular analysis, the FCC specifies the types of evidence a state must consider in making an impairment evaluation for a particular UNE).

[17] 47 U.S.C. §251(d)(2)(B).

[18] For reasons explained in ACS' Comments, the relevant geographic markets for circuit switching are defined as each LEC's service area. Thus, Anchorage, Fairbanks, and Juneau are the relevant markets for the respective ACS LECs. *See* ACS Comments, at 9-11.

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impaired when it serves a large percentage of the customers in all relevant markets. By GCI's own comments, GCI has successfully and economically deployed switches in Anchorage, Fairbanks and Juneau, has a substantial market share in those markets, and is collocated in 100% of ACS' main switching centers in Anchorage, Fairbanks and Juneau. GCI has failed to rebut ACS' showing of non-impairment with respect to entry into these markets.

ACS urges the RCA to reject GCI's overly narrow geographic market definition and define the geographic market for circuit switching as each LEC's service area. The RCA should further determine that an RCA-approved batch cut process is unnecessary in any Alaskan market.

With respect to the other elements, high-capacity loops and dedicated transport, evidence provided in response to the RCA's discovery order shows that there is no impairment without access to these UNEs. Regarding high capacity loops, GCI reports that it owns or controls facilities which it could use as replacements for ACS' UNE DS-3 and dark fiber offerings to *one-hundred percent* of the customers served by such facilities. Thus, there can be no finding of impairment on these dark fiber and high capacity loop routes. The evidence also shows that GCI has deployed inter-office transport facilities on *one hundred percent* of the routes between ACS' switching offices, and does not lack the ability to access alternative facilities. ACS believes the record amply demonstrates that ACS is entitled to unbundling relief to ACS in all relevant geographic markets for mass market switching, dedicated transport, and DS-3 and dark fiber loops.

II. GCI IS NOT IMPAIRED WITH RESPECT TO MASS MARKET SWITCHING

A. The Record Shows That GCI Is Not Impaired In Providing Its Own Switching.

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As explained in ACS' initial comments, the FCC requires states to analyze impairment in mass-market switching under one of three analyses.[19] Under the potential deployment analysis, the FCC requires states to evaluate evidence of actual competitive deployment of switches and potential operational and economic barriers to entry.[20] There is ample evidence of actual competitive deployment by GCI. There is no credible evidence of any economic or operational barrier to entry. GCI attempts to show it would be impaired without access to unbundled switching on the grounds that it lacks access to all loops from its own existing switching. This argument fails for at least two reasons. First, even if GCI is correct on the facts, GCI fails to show why it cannot serve those customers that it does not serve today merely by making some minimal additional investment. Second, GCI is wrong on the law. It is not necessary for the RCA to conclude that GCI has access to every loop from its own switches in order to find that unbundled switching is no longer necessary under the applicable impairment test.

GCI's comments demonstrate that it has successfully and economically deployed switches in Anchorage, Fairbanks and Juneau by collocating at ACS' wire centers and remotes. According to the FCC, "actual deployment is the best indicator of whether there is impairment, and accordingly evidence of actual deployment" should be given substantial weight by the states in their analysis.[21] In its comments, GCI repeatedly refers to its extensive switching network and 100% collocation in Anchorage, Juneau, and Fairbanks.[22] According

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[19] *See* ACS Comments, at 12-13.

[20] *Id.* at ¶¶ 506, 508-20.

[21] Triennial Review Order at ¶ 461.

[22] Comments of GCI, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7(1), at 4, 7, 9 (Jan. 12, 2004) ("GCI Comments").

to the FCC, the RCA must consider this extensive deployment of switches and collocation as evidence that GCI has overcome any potential barriers to entry.

The evidence of GCI's actual entry into the market, its substantial market share, and the fact that GCI is collocated in 100% of ACS' main switching centers in Anchorage, Fairbanks and Juneau overwhelmingly demonstrates that GCI is not impaired without access to the mass-market switching UNE in competitive markets.

1. The RCA Should Find No Impairment Because GCI Is Serving The Mass Market With Its Own Switches.

The FCC requires states to "first examine whether competitors are already using their own switches to serve voice customers in the relevant market."[23] According to the FCC, evidence of switch deployment is the best indicator of whether CLECs are able to overcome barriers to entry for facilities deployment.[24] The existence of even one self-provisioned switch might in some cases justify a finding of no impairment if the RCA determines the market can support multiple, competitive supply.[25] According to the FCC, "there may well be markets where self-provisioning of switching is economic" even where no carriers have in fact provisioned their own switches. In such cases, the FCC directs states to find "no impairment."[26]

As described in ACS' comments, the three Alaskan markets at issue here are examples of markets where competitive deployment of mass market switching has been fully achieved. GCI serves a large percentage of its customers in all relevant markets using its own

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[23] *Id.* at ¶ 508. *See also id.* at ¶ 500 ("The Key consideration to be examined by state commissions is whether the providers are currently offering and able to provide service, and are likely to continue to do so.").

[24] *Id.* at ¶ 435.

[25] *Id.* at ¶ 510.

[26] *Id.* at ¶ 506.

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switches. By GCI's own statements, it is able to serve 91% of the Anchorage market, 71% of the Fairbanks market and 48% of the Juneau market using GCI's own switches.[27] GCI states it has deployed extensive switching and collocations to serve Anchorage, Fairbanks and Juneau and has invested in extensive switching in those markets of over $6 million.[28] The FCC requires the RCA to consider this evidence of actual deployment.[29] According to the FCC's standards, GCI's admitted extensive deployment of switches demonstrates that GCI has overcome any barriers to entry.

GCI's overwhelming market share is significant in determining switching impairment. The FCC requires that actual market evidence receive the greatest weight in determining impairment.[30] According to Former FCC Chief Economist, Dr. Howard Shelanski, "[m]arket share is exactly the kind of evidence the FCC was talking about."[31]

> Comparative market shares are a key measure by which economic competitors judge their success. Market share is particularly relevant in the context of impairment. The very question at the heart of the impairment test is whether a firm can economically enter a given local exchange market.[32]

Indeed, the FCC expressly notes that market share is relevant when that share is not based on access to UNEs.[33] This is important because GCI serves only approximately 5% of its customer lines through the UNE platform.

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[27] *See* Testimony of Emily Thatcher, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7(1), at 5, 10 (Jan. 12, 2004) ("Testimony of Emily Thatcher"). *See also* GCI Comments, at 19-21.

[28] Testimony of Emily Thatcher, at 2.

[29] Triennial Review Order, at ¶ 435.

[30] *Id.* at ¶ 458, 510.

[31] Reply Affidavit of Dr. Howard Shelanski, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7(1), at ¶ 4 (April 2, 2004) ("Reply Affidavit of H. Shelanski").

[32] Reply Affidavit of H. Shelanski, at ¶ 4 (citing Triennial Review Order, at ¶ 84).

[33] Triennial Review Order, at ¶ 115.

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As of November 2003, GCI was serving over one-third of all access lines combined in the LEC service areas of Anchorage (45.9%), Fairbanks (24.6%), and Juneau (23.3%).[34] GCI is serving its customers almost entirely over its own switches. Indeed, GCI reports that it serves approximately 87% of its customer lines statewide through its own switch and transport facilities with leased local loops. GCI's success in entering these three relevant markets using its own switches shows that the mass market can be served effectively without switch unbundling.[35]

2. The RCA Should Find No Impairment Because GCI Does Not Face Significant Economic Barriers To Entry.

Both the FCC and the courts have stated that "impairment" means something substantial, not merely some additional cost to the CLEC typical of the costs normally associated with competitive entry.[36] This means that for the RCA to find impairment, it must find that GCI has a substantial economic or operational barrier.[37] No such barrier exists as to switching. The evidence shows that GCI does not face significant economic barriers to entry for further switch deployment. GCI (1) has successfully collocated and deployed switching facilities; and (2) can economically reach those remote switching and line concentrator locations which it currently is not accessing.

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[34] Response of GCI to RCA Order Requesting Data, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7(1), at 2 (Mar. 19, 2004) ("GCI Data Response"). GCI is serving over 100,000 lines in Anchorage, Fairbanks and Juneau combined– of the 263,000 total lines in those areas – over its own switch and transport facilities. *Id.* at 1-2. This represents the vast majority of GCI's lines.

[35] *See* Triennial Review Order, at ¶ 510.

[36] *AT&T v. Iowa Utilities Bd.*, 525 U.S. 366, 388 (1999); *USTA v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002); *reh'g denied*, (D.C. Cir. 2002); Triennial Review Order, at ¶ 7.

[37] Triennial Review Order, at ¶¶ 506, 508-20.

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GCI claims there are some loops that it cannot serve today using its own switching facilities. Even if this is true, GCI has failed to establish that it could not overcome this by making relatively minor investments. For example, GCI can reach those lines it currently does not serve by either interconnecting out of the remote by a subloop, or installing its own concentrator and using cross-connects.[38] GCI can use ACS tariffed offerings or interconnection agreements.[39] GCI has failed to explain why it is not technically and economically feasible to do so. According to Dr. Shelanski:

> [t]he relevant question for impairment is whether GCI can economically expand the set of customers to which it has access through further remote collocation. If so, then the fact the GCI today finds certain customers inaccessible is due not to impairment as the FCC defines it, but to the fact the GCI has not yet deployed the necessary facilities. GCI's only response is that additional collocation "may" entail uneconomic costs, and that ACS' cabinets "may" not accommodate the necessary connections. This is unsupported conjecture that is belied by GCI's past deployment decisions. GCI provides no basis for determining the extent to which additional collocation would be less economic than the remote collocation GCI has already successfully deployed.[40]

The RCA should find that GCI can economically build facilities or use alternative existing facilities to reach those customers it currently does not serve. GCI can economically gain access to all of ACS' remote switching and line concentrator locations in a number of ways:[41]

> Transport could be provided via GCI's own extensive transport facilities, some of which are described in its Response to RCA Order Requesting Data, or via leased transport facilities of other carriers, including ACS' tariffed services. At

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[38] Affidavit of Kenneth Sprain, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7, at ¶ 2 (Apr. 2, 2004) ("Affidavit of K. Sprain").

[39] *Id.*

[40] Reply Affidavit of H. Shelanski, at ¶ 10 (citing GCI Comments at 22).

[41] Affidavit of K. Sprain, at ¶ 2 ("In order to gain access to some of ACS' remote switching locations, GCI would need to establish transport from GCI's switching location to the vicinity of ACS' remote device. Once in the vicinity of the ACS device, GCI would establish a point of interconnection ('POI') with ACS. This POI would be a physical connection to the sub-loop.").

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> the transport termination point in the vicinity of ACS' remote device, GCI would place an interface device of their choosing, to convert from the transport mode to a mode capable of connecting to the physical sub-loop.[42]

After GCI establishes a method of transport to ACS' remote device, ACS would then cross-connect with GCI at this location as described above.[43]

Moreover, the available evidence shows that GCI has been able to collocate at ACS remotes when it has wanted to do so.[44] GCI has presented no evidence showing that any additional costs of such collocation would be uneconomical.[45] For example, GCI agrees that where there are no limitations, "physical or adjacent collocation can be established through a series of tasks."[46] GCI's estimated costs for collocation at four locations range from approximately $150,000 to $250,000.[47] GCI did not provide a detailed description for the basis for these costs.[48] Even assuming that GCI's cost estimates are correct, however, this can hardly be said to be uneconomic for a company with $390.8 million in gross revenues for 2003.[49] These deployments, which include an added 20 percent "contingency" or "fudge" factor, should be economic for GCI.[50]

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[42] *Id.* at ¶ 3.

[43] *Id.* at ¶ 4.

[44] Reply Affidavit of H. Shelanski, at ¶ 11.

[45] *Id.*

[46] GCI Data Response, at 4.

[47] *Id.*

[48] Affidavit of K. Sprain, at ¶ 8.

[49] GCI Reports 2003 Financial Results, Feb. 18, 2004, at 1, http://www.gci.com/pdfs/press/2003fin_detail.pdf, (visited March 24, 2004).

[50] Affidavit of K. Sprain, at ¶ 8 ("For example, in Anchorage, ACS has proposed a sub-loop price that is approximately $12 per month less than the loop price. If GCI leased a sub-loop from ACS in Fairbanks at $12 per month less than the loop price, GCI would recover its relatively small investment on an $80 loop in approximately seven months, or in about two years on a $241 loop in Fairbanks, resulting in a $12 per month savings for each such sub-loop for the remaining life of its plant.").

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Finally, under the FCC's Triennial Review Order, the RCA must consider all relevant factors in determining whether entry would be uneconomic in the absence of unbundled access to local circuit switching.[51] Under the potential deployment analysis, the Commission must consider as significant the fact that GCI has successfully and economically deployed switches and GCI has relied primarily on its own switches to serve its residential and business customers alike. GCI agrees that it has deployed switching facilities and successfully collocated in a number of ACS wire centers and some remotes.[52] As detailed above, by GCI's own statements, it has installed switches in Anchorage, Fairbanks and Juneau with collocation at each of the ACS central offices. GCI estimates it can reach 91% of the loops in Anchorage, 71% of the loops in Fairbanks, and 48% of the loops in Juneau via its own existing switch deployments.[53] These facts demonstrate that entry is economic. "Market shares served over a CLEC's own facilities are the key ingredients" to determining whether "a competitor has successfully penetrated a market using its own facilities."[54] The logical conclusion of GCI's reasoning, that if GCI cannot currently reach *all* customers GCI must be impaired, "def[ies] common sense and sound economic policy. . . . Indeed, such an argument for impairment would imply that even if GCI took 90% of local exchange customers in Anchorage, it would still be able to claim it is competitively 'impaired' and demand unbundled switching" for the remaining 10% of the market.[55] This the Act surely never intended.

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[51] *Id.* at ¶ 458.

[52] GCI Comments, at 7.

[53] *See* Testimony of Emily Thatcher, at 5, 10.

[54] Reply Affidavit of H. Shelanski, at ¶ 7.

[55] Affidavit of Dr. Howard Shelanski, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7(1), at ¶ 19 (Jan. 12, 2004) ("Affidavit of H. Shelanski").

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3. The RCA Should Find No Impairment Because GCI Does Not Face Significant Operational Barriers To Entry.

As part of the RCA's impairment analysis, the FCC directs the RCA to examine any operational barriers GCI may face.[56] GCI argues that ACS' network design precludes GCI's access to some unbundled loops, thereby causing impairment in mass-market switching.[57] However, as demonstrated above, even if there are some lines that GCI cannot serve currently, this does not mean GCI faces substantial operational barriers. Indeed, GCI's own statements show that it does not face significant operational barriers to entry. Significantly, as stated above, GCI serves only approximately 5% of its customer lines through the UNE platform[58] and has chosen to do so despite access to UNEs. Given the small number of customers that GCI serves through UNE-P and the above demonstrated self-provisioning by GCI, ACS' network design cannot create a significant operational barrier.

Moreover, contrary to GCI's assertions,[59] the Triennial Review Order does not require ACS to implement network design changes solely to accommodate GCI's switches. GCI proposes that ACS bypass the remote switch or DLC by leaving a sufficient number of copper pairs available to GCI to continue providing service on unbundled loops. GCI also suggests that if multiplexing is available at the remote switch or DLC, GCI could utilize enhanced extended links ("EELs") to connect to its own switching facilities.[60]

> ACS has already indicated that it was willing to accommodate a similar request in the Prefiled Opposition Testimony of Stephen A. Pratt filed in U-96-89, filed September 29, 2004. Beyond this, to require ACS to construct its plant based

[56] Triennial Review Order, at ¶ 511.

[57] GCI Comments, at 18.

[58] General Communication, Inc. SEC Form 10-Q at 37 (Sept. 30, 2003).

[59] GCI Comments, at 12-14; GCI Data Response, at 3.

[60] GCI Data Response, at 3.

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on one interconnecting carrier's perceived needs causes ACS to unnecessarily duplicate its own facilities.[61]

Additionally, GCI proposes that in the case of a DLC deployment, ACS could deploy DLCs with multi-hosting capability.[62] "In fact, ACS has installed DLCs with multi-hosting capability in the locations that GCI identified in its comments."[63]

As part of its analysis, the FCC also directs the RCA to consider evidence of costs and physical constraints associated with collocation in the particular market and whether there is sufficient collocation space in ACS' office.[64] By GCI's own statements, GCI is collocated in 100% of ACS' main switching centers in Anchorage, Fairbanks and Juneau.[65] Further, GCI has demonstrated that it has been able to expand its facilities when it has made a business decision to do so. For example, in some instances, GCI has used resale as an interim means of serving customers while it has acquired additional switches and constructed additional collocations facilities, to which GCI then cut-over its resale customers.[66] In Anchorage, GCI has taken roughly *half* the market using *its own* switching and transport almost exclusively.[67] In short, GCI has failed to establish any significant constraints on its ability to compete in these markets.

4. The Law Requires That Unbundling Be Minimized.

The FCC has expressed a clear preference for minimizing unbundling as a solution to any impairment finding. The Triennial Review Order indicates that the FCC

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[61] Affidavit of K. Sprain, at ¶ 5.

[62] GCI Data Response, at 3.

[63] Affidavit of K. Sprain, at ¶ 7 (citing Testimony of Emily Thatcher, at 8-10).

[64] Triennial Review Order, at ¶ 477.

[65] GCI Comments, at 7.

[66] Declaration of Frederick W. Hitz, III, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, at ¶ 4.

[67] *Id.*

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requires unbundling in the least intrusive way possible and only where truly needed.[68] According to the FCC:

> [i]f, after applying the triggers and the flexible analysis of potential deployment . . . a state commission concurs that requesting carriers are impaired in the mass market in any particular market, we conclude that it must next consider the use of 'rolling access to unbundled local switching' to address impairment in that market.[69]

Where transitional access to unbundled switching would cure any impairment, the state must implement rolling access, "rather than perpetuating permanent access to the switching element."[70]

The alternative analyses and solutions indicate that the FCC has established a rigorous threshold for finding impairment. Thus, even where GCI has not provisioned its own switches, the RCA must determine whether self-provisioning of switching is nonetheless economic.[71] As demonstrated above, GCI has failed to show that it faces economic barriers that meet the FCC's impairment standards.

Moreover, the D.C. Circuit's decision made clear that unbundling should be limited. In discussing the FCC's failure to consider alternatives available from the ILEC itself, the court stated "[a]fter all, the purpose of the Act is not to allow the widest possible unbundling, or to guarantee competitors access to competitive elements at the lowest price that government may lawfully mandate."[72] In addition, the court seriously questioned whether the record could support the FCC's impairment finding for mass market switching.[73]

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[68] Triennial Review Order at ¶¶ 3, 7, 84; Affidavit of H. Shelanski, at ¶ 11.

[69] Triennial Review Order at ¶ 521.

[70] *Id.*

[71] *Id.* at ¶ 506.

[72] *United States Telecom Ass'n*, No. 00-1012, at 31.

[73] *Id.* at 20.

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Finally, if the RCA finds any impairment despite the overwhelming evidence to the contrary, the only impairment that rationally could be said to have been identified must be limited to those individual lines GCI has identified as the lines they cannot access. However, as noted below, such a finding would be too narrow to meet the FCC's definition of a "market" for purposes of the switching UNE.

B. The RCA Should Define the Geographic Market For Circuit Switching As Each LEC's Service Area.

1. The FCC Has Ordered The States To Realistically Define "Markets"for Mass Market Switching.

ACS believes that the relevant geographic market of each of the ACS LECs for purposes of analyzing the need for unbundled switching should coincide with that LEC's service area.[74] This market definition takes into account the FCC's Triennial Review Order and reflects the reality of the Alaskan markets. The RCA should reject GCI's proposed market definition, which essentially considers each customer as a "market" because it is overly narrow, contrary to FCC directives, and would be extremely burdensome to administer.

The FCC has counseled against an overly narrow market definition that will compromise the available economic scale and scope of a switch.[75] Further, geographic market definitions must accurately reflect market realities. Accordingly, to determine the geographic market for circuit switching, the FCC directs state commissions to consider such factors as: (i) the locations of customers actually being served by competitors; (ii) the variation in factors affecting competitors' ability to serve each group of customers; and (iii) the competitors'

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[74] *See* ACS Comments, at 11.

[75] Triennial Review Order at ¶ 495.

ability to target and serve specific markets economically and efficiently using currently available technologies.[76]

GCI explains its proposed market definition as follows:[77]

> The relevant market for the impairment analysis is the geographic markets relevant to performing the impairment analysis are the geographic area in each of the Anchorage, Fairbanks, and Juneau study areas comprised of the area served by loops accessible at each ACS host switch and those areas served by loops inaccessible at each ACS host switch.

GCI's proposed market definition is incorrect. It defines markets too narrowly and does not adequately account for market realities, including those customers that GCI could economically reach, but is not doing so.

The FCC's order implies that switching markets should not be defined in such a way that divides areas that could be served economically by a single switch.[78] All this evidence in this proceeding suggests a market definition coextensive with the LEC serving area. In Anchorage, for example, the RCA has established a single UNE loop rate and uniform retail rates for the service area, and GCI is collocated in 100% of the main switching centers in this service area. In each LEC service area, GCI is able to serve the entire customer base from a single class 5E switch.[79]

The LEC service area also is the correct market definition because there is no evidence to suggest that GCI cannot continue to add remote switching capability and transport that extends the reach of its existing switches to new customers in a given ACS LEC service area.[80] According to Dr. Shelanski:

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[76] *Id.* at ¶ 521.

[77] GCI Comments, at 5.

[78] Affidavit of H. Shelanski, at ¶ 11.

[79] *Id.*

[80] *Id.* at ¶¶ 11, 12.

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> If GCI can collocate a remote terminal and use an existing switch to serve those customers that GCI does not currently reach, then those customers should be included in the same market so long as the costs of collocation and transport do not render use of the existing switch uneconomic for those new customers. The mere fact that GCI would have to purchase a remote switch and either build or buy transport does not of course mean that those new customers should be viewed as a separate market. Only if such costs are so high as to make it uneconomic or inefficient to use an existing host switch to serve those customers should the market be defined more narrowly. I have seen no evidence to suggest that GCI cannot continue to add remote switching capability and transport that extends the reach of its existing switches to new customers in a given ACS LEC service area.[81]

Therefore, ACS recommends that each LEC's local exchange service area be the presumptive "market" for purposes of analyzing mass market switching.

2. GCI's Preferred Market Definition Is Unreasonably Restrictive.

GCI's proposed market definition would place loops accessible from the ACS host switch and those not accessible from the host switch into separate "markets." This overly narrow definition is entirely inconsistent with the FCC's Triennial Review Order. First, as discussed above, GCI is not without solutions to reach any loops that may not be accessible from the host switch.[82] Where GCI can economically collocate remotes to reach customers that it cannot reach directly from the host switch, those customers should not be placed in a separate market from the customers directly accessible from the host. By GCI's own statements, it has over time expanded its network by collocating at remote locations.[83] GCI has not shown why individual loops it identifies as supposedly "inaccessible" should be treated as "markets" for purposes of the unbundled switching analysis.

Only where it is economically infeasible for GCI to build its own facilities to reach customers should ACS be required to unbundle. GCI is not impaired where it can

[81] Affidavit of H. Shelanski, at ¶ 21.

[82] Affidavit of K. Sprain, at ¶ 3.

[83] GCI Comments, at 19-20.

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economically expand through further remote collocation; it just has not yet deployed the necessary facilities.[84] According to Dr. Shelanksi, "GCI provides no basis for determining the extent to which additional collocation would be less economic than the remote collocation GCI has already successfully deployed."[85] Mere speculation by GCI that additional collocation "may" entail additional costs[86] cannot be the basis for an impairment finding. The question is whether the increased costs make switching uneconomical, not whether additional facilities will increase costs.[87] The evidence shows that GCI has been able to collocate remotes successfully when it has wanted to do so.[88]

GCI claims that it cannot access loops in very isolated geographic markets. If the RCA adopts GCI's narrow market definition, any resulting unbundling obligations must also be narrow. Only with regard to those customers that GCI does not and cannot economically provide switching, should GCI have access to unbundled switching. However, for the reasons discussed above and in ACS' prior filings in this docket, ACS believes such a "market" definition is inconsistent with the Act and the FCC's Triennial Review Order.

3. GCI's Right To Access UNE Loops At The Central Office Is Irrelevant In Defining The Geographic Market.

GCI attempts to justify its narrow market definition for switching by referring to the obligation to unbundle loops at the central office.[89] GCI cites to provisions in the Triennial Review Order relating to unbundling obligations for DLCs for hybrid loops.[90] Any

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[84] Reply Affidavit of H. Shelanski, at ¶ 7.
[85] *Id.* at ¶ 10.
[86] GCI Comments, at 22.
[87] Reply Affidavit of H. Shelanski, at ¶ 11.
[88] *Id.*
[89] GCI Comments, at 11-14.
[90] GCI Comments, at 13 (citing Triennial Review Order at ¶ 297).

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such obligations, however, apply to loops, not switching.[91] Moreover, the RCA's definition of the market is strictly for the purpose of defining the obligation of unbundled switching, under the Triennial Review Order. Whether a UNE is impaired is analyzed on an element-by-element basis.[92] According to Dr. Shelanski, "[t]he fact that GCI may be impaired in providing a loop does not mean that it is impaired in providing *switching* for that loop. The FCC did not intend its finding with respect to access to DS0 loops to short-circuit the independent impairment analysis for switching."[93] GCI is not impaired in providing switching for those loops if, as described above, it can economically use remote collocation to serve loops that are not accessible by GCI from the host.[94]

C. The Appropriate DS0 Cut-Off Should Reflect The FCC's Findings

In its initial comments, ACS did not address the DS0 cut-off because ACS believes it is irrelevant in the Alaskan markets. The FCC made a national non-impairment finding for enterprise customers and ACS believes it has made the necessary showing for unbundling relief for switching for mass-market customers. GCI has not shown it faces "impairment" for mass-market switching under the FCC standard. Where there are no unbundling requirements for either mass-market or enterprise switching, it is unnecessary to determine the appropriate DS0 cut-off for mass-market switching. To the extent the RCA determines this finding is relevant, however, it should reject GCI's proposed cut-off points as excessively high, and select cut-offs grounded in reality.

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[91] *See* Triennial Review Order at ¶ 297.

[92] Triennial Review Order at ¶ 7.

[93] Reply Affidavit of H. Shelanski, at ¶ 9.

[94] *Id.* ("At a minimum, then, the market should be defined as including customers that can be served from the host switch *and* customers that can be served economically through collocated remotes.").

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The FCC authorized the RCA to determine the appropriate cut-off for multi-line DS0 customers as enterprise customers for switching purposes.[95] In establishing a DS0 cut-off, the FCC was attempting to further constrain unbundling of mass-market switching. While the RCA has discretion to determine the appropriate cut-off, the number should reflect the FCC's intention to limit unbundling of mass-market switching. The FCC previously established 4 lines as the appropriate DS0 cut-off for customers in the most competitive markets in the country.[96] The cut-off point should be 4 lines in Anchorage, Fairbanks, and Juneau because those markets are at least as competitive as the markets cited by the FCC.[97] Indeed, "Anchorage's level of competition in the retail telephone market exceeds that of every other city in the Lower 48 [states] by nearly 20 points."[98]

The cut-off proposed by GCI is multiple times greater than the FCC's recommendation.[99] GCI, thus, is proposing an expansion of unbundling obligations, rather than the FCC's intended limitation of those obligations. In its comments, GCI recommended the following DS0 cut-off points: Anchorage—11 lines, Fairbanks—8 lines, and Juneau—19 lines. To get its recommended cut-off points, GCI compared the cost and revenues to GCI of provisioning a T1 connection to a customer premise in lieu of multiple DS0s via unbundled

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[95] Triennial Review Order at ¶ 497 (The "point may be the point where it makes economic sense for a multi-line customer to be served via a DSI loop" because at some point, customers taking a sufficient number of DS0 lines could be served similarly to enterprise customers.).

[96] *Id.*

[97] *See* ACS Comments, at 2-4.

[98] *See Investigation of the Local Exchange Revenue-Requirement, Depreciation, Cost-of-Service, Rate Design Studies, and Tariff Rate Revisions Designated as TA429-120, TA431-120, and TA457-120 Filed by ACS of Anchorage, Inc.*, Order Granting Reconsideration, in Part; Granting Confidentiality; Making Rates Interim But Not Refundable; Subsuming Issues Into Docket U-01-34, Amending Docket Title; Affirming Electronic Ruling Extending Filing Deadline; and Closing Docket U-03-99, U-01-34 (27), Dissenting Statement of Commissioner Kate Giard at 1 (Reg. Comm. of Alaska, Dec. 8, 2003).

[99] "It is to GCI's commercial advantage to have the cut-off be as high as possible because everything below the line falls into the category of switching that the FCC, in its now-vacated TRO decision, found should presumptively be unbundled." Reply Affidavit of H. Shelanski, at ¶ 12.

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switching.[100] This analysis is wrong because "GCI's proposed rationale—that the cut-off should reflect the point at which GCI would break even building a T1 connection to the customer—is completely disconnected from the costs of supplying *switching* to those enterprise customers."[101]

For the reasons explained above, the RCA should determine that the appropriate DS0 cut-off is 4 lines—a number which reflects past FCC findings.

D. GCI'S REQUEST THAT THE RCA IMPOSE A MANDATORY HOT CUT PROCESS LACKS MERIT.

1. The Establishment of A Batch Cut Process Is Unnecessary In Any Alaskan Market Because Any Problems With Hot Cuts Have Been Solved.

The FCC requires the state to consider whether absence of a batch cut migration process is causing impairment in the market for mass-market switching.[102] It is only if the state finds such impairment that the FCC requires the Commission to consider the creation of a batch cut migration process.[103] GCI argues that the RCA should establish a batch cut process in the ACS LEC markets. Contrary to what GCI claims for the reasons explained in ACS' comments[104] and here, an RCA-approved batch cut process is unnecessary in any of the Alaskan markets.

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[100] Testimony of Emily Thatcher, at 15. GCI argues in its comments that the cut-off point for DS0 switching "is the point at which it is economically feasible to lease or build a TI connection to a customer premise, aggregate multiple analog lines, and serve the customer using the CLEC's own switch, in lieu of local circuit switching for individual DS0s." *Id.* GCI has not provided support for such a statement by the FCC. Instead, the Triennial Review Order ¶ 497 leaves the determination to the states.

[101] Reply Affidavit of H. Shelanski, at ¶ 13.

[102] Triennial Review Order at ¶ 460.

[103] *Id.*

[104] *See* ACS Comments, at 18-23.

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In its comments, GCI complains that it has experienced problems in the past with "hot cuts" of lines from ACS' switches to GCI's switches.[105] The "problems" cited by GCI already have been resolved. On March 5, 2004, after GCI filed its comments, the parties settled an ongoing dispute relating to all provisioning and ordering issues for UNEs and services.[106] The agreement provides that the parties will dismiss a related FCC case and asks the RCA to approve the agreement. In the joint motion, the parties also ask the RCA to amend their current interconnection arbitration agreements accordingly. The parties have agreed to file amended and restated interconnection agreements for Anchorage, Fairbanks and Juneau that fully integrate the terms of the settlement agreement.[107] They have also agreed to incorporate the terms of the settlement agreement into any future interconnection agreements between GCI and ACS.

Further, on its own, the RCA closed docket U-02-97, which imposed requirements on ACS in processing and provisioning of GCI service orders.[108] That docket required ACS to file monthly metric reports demonstrating that it provided timely and nondiscriminatory processing and provisioning of GCI service orders.[109] The RCA found that

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[105] GCI Comments, at 26-28.

[106] [Redacted] ACS Data Response Compliance Filing Pursuant to Order No. 3, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7(1), Exhibit 4 (March 19, 2004).

[107] Joint Stipulation Resolving Order Processing and Provisioning Terms of the Contract, *In the Matter of the Petition by GCI for Arbitration Under Section 252 of the Communications Act of 1996 with the MUNICIPALITY OF ANCHORAGE d/b/a ATU TELECOMMUNICATIONS a/k/a ATU TELECOMMUNICATIONS for the purpose of Instituting Local Competition*, U-96-89, Exhibit A (April 2, 2004).

[108] Order Approving Tariff Sheets, Finding Joint Motion for Closure and Dismissal Moot, and Closing Docket, *In the Matter of the Investigation into Disparities in Service Provided to Customers of a Competitive Local Exchange Carrier and an Incumbent Local Exchange Carrier*, U-02-97 (Mar. 15, 2004) ("Ordering Closing Docket").

[109] Order Closing Docket, at 3.

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ACS complied with the requirements.[110] "In addition, [the RCA's] Consumer Protection Section reports a significant reduction in customer complaints related to new or changed service installations compared to the numbers reported" in October, 2002.[111] The RCA closed the docket because the interim solutions were working effectively to protect customers and permanent solutions were being addressed in other dockets.[112] The RCA indicated that ACS is providing parity of service to customers in provisioning of new or changed service installations.[113] The RCA should take into account that the parties have settled provisioning and ordering issues and thus find the establishment of a batch but process unnecessary in the relevant markets.

Moreover, ACS now has a procedure in place for hot cuts that meets the actual demand for cut-overs that the company is receiving from CLECs. According to GCI, in 2002 there were 148 hot cut orders per day in Anchorage, Fairbanks, and Juneau combined. Similarly, in 2003, there were 130 such hot cut orders per day.[114] ACS is now capable of processing 314 orders per-day for all markets.[115] Thus, ACS is well equipped to meet the level of demand and the hot cut process in Alaska is not the source of any competitive impairment.

GCI proposes next day provisioning for ACS to perform hot cuts to move a customer loop from ACS' switch to GCI's switching facility.[116] There is no need for

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[110] *Id.*

[111] *Id.*

[112] *Id.*

[113] *Id.* at 4.

[114] Testimony of M. Sue Keeling, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7(1), at 5 (Jan. 12, 2004).

[115] ACS Comments, at 22 (citing Affidavit of S. Pratt, at ¶ 8).

[116] GCI Comments, at 30-31.

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performance metrics for batch cuts, especially under the settlement agreement which provides for processing and provisioning metric procedures.

GCI has failed to identify any *present* problem with hot cuts. The batch cut migration process that GCI advocates is a solution in search of a problem. It is not needed to prevent "impairment." It would be an unnecessary burden on ACS. In its comments, GCI proposes a batch-cut process with up to 10 conversions performed in a batch.[117] Indeed, there are not enough orders in any of the Alaskan markets to make it economically feasible for ACS to implement such a batch cut process. The FCC intended the batch hot cut analysis only to mitigate any switching impairment that may arise from large volumes of transfers of a competitor's mass market customers from the switching UNE to the competitor's own switches.[118] In light of the utter absence of evidence of any switching impairment, the settlement agreement, the order closing the docket, and for the reasons discussed in ACS' initial comments, the RCA should not establish a batch cut process.

2. The Process Proposed by GCI Is Inefficient and Impermissibly Requires Special Treatment for GCI.

ACS continually seeks to determine if additional efficiencies in provisioning can be achieved, and welcomes the opportunity to work with GCI on mutually acceptable processes for provisioning hot cuts. The modified process proposed by GCI, however, is completely unworkable, more than doubling the amount of time that it would take for an ACS technician to provision each loop.[119]

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[117] *Id.* at 30.

[118] Triennial Review Order, at ¶ 423, 460

[119] *See* Debra Morris Reply Affidavit of Debra D. Morris, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7(1) (April 2, 2004) ("Reply Affidavit of D. Morris").

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The Affidavit of Debra D. Morris, attached hereto, describes in detail the many issues associated with GCI's proposed process.[120] For example, GCI proposes that the ACS technician have a 15-minute conversation with GCI immediately prior to provisioning each batch.[121] GCI also requests that it add to the process another estimated 50 minutes per 10-line batch that the ACS technician should wait for GCI to confirm that its satisfied with the provisioning work.[122] It currently takes an ACS technician approximately 60 minutes to complete provisioning of a ten-loop batch.[123] Looking only at two of GCI's proposed modifications to the hot cut process, ACS Technicians would spend an *additional* 65 minutes on telephone conversations with GCI personnel, *more than doubling* the provisioning time.

GCI provides no support to justify the formidable costs that would be imposed under its proposal. For example, with regard to the additional 50 minutes per-batch taken by ACS technicians while waiting for GCI to test the line, GCI incorrectly claims that "any costs will be offset by the reduction of repeat collocation site visits to address customer outages caused by faulty hot cuts."[124] This simply is not true. From January 31, 2004 to March 31, 2004, GCI opened 336 Remedy Tickets for failed hot cuts out of a total of 17,000 total service orders provisioned by ACS for GCI during that time.[125] The records demonstrate, however, that only a small portion of these Remedy Tickets (approximately 110 out of 17,000) were due to Central Office error that could have been corrected if the ACS Technician had waited at the CO for GCI to validate successful completion of the hot cut.[126] These statistics show that less

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[120] *See generally* Reply Affidavit of D. Morris.
[121] GCI Response to Data Request, Exhibit GCI-5 at ¶ 1.
[122] *Id.* ¶ 14.
[123] Reply Affidavit of D. Morris at ¶ 12.
[124] GCI Data Response, Exhibit G-5 at ¶ 1.
[125] Reply Affidavit of D. Morris at ¶ 14.
[126] *Id.*

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than one percent of orders were installed unsuccessfully due to ACS error at the CO. In short, the process GCI asks for would create considerable inefficiencies to achieve negligible benefit.

Also troublesome, GCI requests that it have a direct line to ACS technicians to report trouble.[127] Although GCI does not assign an estimated time allotment to this task, it is yet one more instance that GCI proposes to interrupt the ACS technician to gain priority for itself.[128] ACS has established a process by which GCI and all other ACS retail and CLEC customers report problems: through Remedy OSS.[129] Once an order is reported in this fashion, ACS can track the order and schedule work to remedy a problem. In addition to the inefficiencies spawned by GCI's request to randomly pull ACS technicians away from orders already scheduled for other customers, GCI's request would require ACS to unlawfully discriminate in favor of GCI.

As a final matter, GCI's proposed processes would frustrate ACS' movement toward more efficient, automated processes. ACS will continue to upgrade its MARTENS system to facilitate communications between ACS and its CLEC customers related to their service orders.[130] These systems will be superior to, and largely replace, other modes of communication, such as fax and e-mail, that ACS retail and CLEC customers now use.[131] Determining the most advantageous use of these systems is best determined by ACS in consultation with its customers, and not through a regulatory mandate. In addition, because these processes apply to all ACS retail customers and ACS' CLEC customers, ACS has every incentive to provision hot cuts as efficiently as possible. ACS must retain the flexibility to

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[127] GCI Response to Data Request, Exhibit GCI-5 at ¶ 3.
[128] Reply Affidavit of D. Morris at ¶ 5.
[129] *Id.* at ¶ 16.
[130] *Id.* at ¶ 3.
[131] *Id.*

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work with its customers to evaluate and improve current processes as circumstances and technology change. GCI's proposals would impede such progress and must be rejected.

III. GCI IS NOT IMPAIRED WITHOUT ACCESS TO HIGH CAPACITY LOOPS AND DARK FIBER LOOPS.

ACS also has sought relief from providing access to unbundled DS-3 loops and dark fiber loops because no competitor will suffer impairment under the FCC's analysis.[132] A state's finding of "no impairment" must be based on FCC-defined triggers measuring the possibility of alternatives to the ILEC's loops at the customer location in question.[133] To determine that an ILEC no longer must provide DS-3 UNE loops to a particular location, the RCA must find no impairment where the *competitive wholesale facilities trigger*[134] or the *self-provisioning trigger* has been satisfied.[135] The applicable analysis, the *self-provisioning trigger,* requires two or more competing providers not affiliated with each other or the ILEC serving customers at a location use (i) its own loop facilities it has deployed at that location; or (ii) dark fiber it has acquired under a long-term IRU and to which it has attached its own optronics.[136] To determine that an ILEC no longer must provide Dark Fiber loops to a particular location, the state must find that the location meets the *self-provisioning trigger*.[137] State commissions have "Analytical Flexibility" when applying the Self-Provisioning Trigger for dark fiber loops. "[W]hen conducting its customer location specific analyses, a state must

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[132] ACS Comments, at 27-30.

[133] Triennial Review Order at ¶ 202.

[134] Triennial Review Order, at ¶¶ 337-38. The *Competitive wholesale facilities trigger* requires two or more competing providers not affiliated with each other or the ILEC that (i) have deployed its own facilities and offers a loop over those facilities on a "widely-available wholesale basis" to other carriers desiring to serve customers at that location; and (ii) have access to the entire customer location, including each individual unit within that location.

[135] *Id.* at ¶ 321.

[136] *Id.* at ¶¶ 332-34.

[137] *Id.* at ¶¶ 314, 334, 335.

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consider and may also find no impairment at a particular customer location even when this trigger has not been facially met *if* the state commission finds that no material economic or operational barriers at a customer location preclude competitive LECS from economically deploying loop transmission facilities . . . . In making a determination that competitive LECs *could* economically deploy loop transmission facilities" that state commission must consider various factors.[138]

ACS believes that the self-provisioning analysis is satisfied on one-hundred percent of the high-capacity and dark fiber loops. GCI was asked to list end points to all high capacity loops and dark fiber loops in the ACS Anchorage, Juneau and Fairbanks service areas that GCI controls and that could be available for the provision of service comparable to UNE DS-3 or dark fiber loop services. In response, GCI listed numerous such customer locations and stated "GCI is not currently aware of any limitations with respect to the identified facilities that would affect their use as a replacement for the incumbent's unbundled network element DS-3 and/or dark fiber services, as available at each of the customer locations listed."[139] The evidence recently provided by GCI shows there is no impairment for high capacity and dark fiber loops on these routes because GCI has not identified any route location requiring high capacity transport that it cannot self-provision.[140]

Additionally, GCI states that it currently owns the loop facilities that serve 25% of its retail lines.[141] Further, GCI is an interexchange carrier to certain communities that are not served by ACS. Within the LEC service areas of ACS, GCI has the exclusive cable to two

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[138] *Id.* at ¶ 335.

[139] GCI Data Response, at 8.

[140] Affidavit of K. Sprain, at ¶ 10.

[141] Declaration of Frederick W. Hitz, III at 5, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket 01-338 (filed with FCC April 5, 2002).

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subdivisions. ACS is unable to provide facilities-based service to customers in these subdivisions[142] and is required to lease service from GCI to do so. Even if the unbundling obligation is lifted, ACS has an incentive to continue offering unbundled loops to GCI, because ACS wants access to customers that are served exclusively by GCI's facilities.[143] In addition, GCI's fiber rings would appear to place the company in a good position to construct high capacity loops to business customers in proximity to the ring.[144]

The RCA must consider the above as evidence that GCI could economically deploy loop transmission facilities under the "analytical flexibility" of the self-provisioning trigger.[145]

IV. GCI IS NOT IMPAIRED WITHOUT ACCESS TO UNBUNDLED DEDICATED INTEROFFICE DS-3 AND DARK FIBER TRANSPORT.

The record evidence also now shows that GCI is not impaired without access to unbundled high capacity inter-office transport. The Triennial Review order creates a two-trigger review by which an ILEC can show in a route-specific state review proceeding that a requesting carrier is not impaired without unbundled DS-1, DS-3 or dark fiber transport.[146] A state must find non-impairment as to any particular point-to-point route if the state finds either the *transport self-provisioning trigger* or the *transport third party alternative* trigger have been met.[147]

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[142] Affidavit of Steven Pratt, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies, R-03-7(1),* ACS Comments, at ¶ 17 (Jan. 12, 2003) ("Affidavit of S. Pratt").

[143] ACS Comments, at 30.

[144] Affidavit of H. Shelanski, at ¶ 20.

[145] Triennial Review Order ¶ 335. *See also infra* FN 102.

[146] Triennial Review Order ¶ 388.

[146] *Id.* at ¶ 394.

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ACS believes that the impairment trigger is met for *all* specific inter-office routes in the three ACS LEC markets at issue.[148] The available evidence strongly suggests that transport facilities are not a source of competitive impairment in Alaska. GCI's data response shows that it has an extensive transport network.[149] GCI provides approximately 25% of its service using its own switching, transport and loops; and provides two-thirds of its service using its own switching and transport, with ACS' loops.[150] According to GCI, it "is collocated as seven ACS-designated wire centers in Anchorage, two in Fairbanks, and two in Juneau. At each of these sites, GCI has deployed fiber facilities that are capable of supplying transport to other carriers, such as the high-capacity transport offered by GCI in both its interstate and intrastate tariffs."[151] In each of its LEC service areas, GCI uses its own fiber to connect its switch with the ACS offices in which GCI's remotes are collocated. Similar fiber resources connect GCI's offices in Juneau and Fairbanks with ACS offices in those respective cities.[152] On March 19, GCI provided a list of transport facilities that demonstrates it has the ability to connect either directly or indirectly between *any* two ACS central offices, through facilities GCI owns, controls, leases, or has obtained use from an entity other than ACS.[153] The fact that GCI has self-deployed transport facilities throughout ACS serving areas and between *all* ACS

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[148] In its recent decision, the D.C. Circuit determined the route-specific analysis was too narrow, and that the FCC should also have considered alternative routes. The court stated "[w]e do not see how the Commission can simply ignore facilities deployment along similar routes when assessing impairment." *United States Telecom Ass'n*, at 29.

[149] GCI's Data Response, at 7.

[150] Comments of GCI before the FCC (CC Docket Nos. 01-338, 96-98, 98-147).

[151] GCI Data Response, at 7.

[152] Affidavit of S. Pratt, at ¶ 15. GCI has a fiber ring in Anchorage that GCI already connected to 22 office buildings, but GCI has not made available to ACS either the location of those 22 office buildings or any further details of its fiber resources. *Id.* at ¶ 14.

[153] GCI Data Response, at 7.

central offices demonstrates that there are no economical or operational barriers to entry.[154] Additionally, there is a third-party provider, Alaska Fiber Star ("AFS"), of fiber transport in Alaska providing transport between 4 out of 5 of ACS' main wire centers in Anchorage, as well as both of ACS' primary wire centers in Fairbanks.[155] This demonstrates the impairment trigger is clearly met on these routes because there are two carriers, GCI and AFS, providing transport in addition to ACS.

Further, ACS believes that GCI has significant fiber in place throughout Alaska for its cable television backbone.[156] For example, the transport between each of the ACS collocated offices and the GCI switch location on Arctic Boulevard is provided by GCI. In Fairbanks, GCI has extensive fiber within the ACS Fairbanks LEC serving area which includes fiber to ACS offices. In Juneau, GCI has extensive fiber associated with its cable television operations. In addition, GCI has submarine cable landing at Whittier, Alaska that, with a spur to Juneau, extends to Anchorage, Valdez, and along the pipeline route to Fairbanks.[157]

The above facts weigh heavily against any finding of competitive impairment due to transport. GCI has had actual experience in successfully providing its own transport. As stated previously, the FCC says this factor should receive substantial weight in the impairment analysis[158] and thus, greatly weakens the case for impairment. Additionally, "GCI's extensive cable network provides GCI with an alternative set of transport facilities

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[154] Affidavit of K. Sprain, at ¶ 9.

[155] *Id.*; See also Letter Responding to Data Request from Brian Roussell, CEO at AFS and WCI Cable, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7(1) (Mar. 15, 2004).

[156] Affidavit of H. Shelanski, at ¶ 14.

[157] *Id.*

[158] Triennial Review Order ¶ 461.

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which eliminate any possibility of impairment, especially as GCI pursues its strategy of cable telephony."[159]

VI. CONCLUSION

ACS submits that the RCA should provide unbundling relief to ACS in all relevant geographic markets for mass-market switching and dedicated transport, even under the standards adopted by the FCC and reversed by the Court of Appeals. No competitor has demonstrated that it is "impaired" under the FCC's standards. ACS does not have to establish that GCI has access to all loops from its own switches in order to establish that GCI is not impaired in providing its own switching. GCI's significant market share and extensive facilities deployed in the market are ample evidence that there is "impairment" within the meaning of the Communications Act. To the extent it is even relevant, the RCA should find that the appropriate DS0 cut-off is four lines, a number that reflects FCC findings. The RCA should find that the establishment of a batch cut loop migration process in unnecessary in ACS' service areas, especially in light of the parties' recent settlement on provisioning and ordering issues. Further, the newly submitted evidence for the loops and transport elements weigh heavily in favor of a non-impairment finding on each of these routes.

Respectfully submitted this 2nd day of April 2004.

By Martha Beckwith

Martha Beckwith
Alaska Bar No. 7705006
Attorney for ACS LECs

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[159] Affidavit of H. Shelanski, at ¶ 20.

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: Mark Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

In the Matter of the new Requirements of 47 C.F.R. § 51 Related to the FCC Triennial Review Order Interconnection Provisions and Policies	))))	R-03-07

Reply Affidavit of Howard A. Shelanski

Qualifications

1. My qualifications are set forth in my direct testimony in this proceeding, which I filed on January 12, 2004.

Summary

2. The primary purpose of this reply declaration is to respond to several economic arguments GCI has made in this proceeding. Specifically, I will explain (1) why GCI is incorrect when it argues that its market shares are irrelevant to the impairment inquiry currently before the RCA; (2) why GCI's proposed market definition is erroneous; (3) why GCI's proposed cut-off point for distinguishing enterprise from DS0 switching is unreasonably high; and (4) why the evidence shows that GCI does not need access to unbundled transport facilities economically to enter ACS' local exchange markets. In sum, the evidence clearly demonstrates an absence of competitive impairment for GCI and strongly favors the elimination of unbundled switching and transport in ACS' Anchorage, Fairbanks, and Juneau service areas.

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Introduction

3. GCI has been a tremendously successful entrant in Alaska. Using primarily its own switching and transport, GCI has managed in a short time to take from roughly one-quarter to one-half of ACS' residential and business customers. Yet in this forum GCI attempts to deflect attention from the clear evidence of its success and to present itself as a struggling, impaired company whose economic viability in the local exchange market depends on access to ACS' facilities. From an economic perspective, GCI's claim of impairment is not credible. The company has achieved competitive success remarkable by the standards of any industry and its effort to argue to the contrary robs the term "impairment" of any economic substance. The only way the company can argue otherwise is by attempting to steer the inquiry away from the relevant facts and sensible market definitions. As I will discuss below, however, a common-sense reading of the facts coupled with a coherent market definition lead firmly to the conclusion that GCI suffers no impairment in switching, transport, or enterprise loops.

GCI's Market Shares are Relevant to the Impairment Inquiry

4. GCI claims that its competitive market shares are irrelevant to the impairment analysis. GCI's Response to ACS' Proposed Discovery Questions at 3. As an economic matter, this claim makes no sense. Comparative market shares are a key measure by which economic competitors judge their success. Market share is particularly relevant in the context of impairment. The very question at the heart of the impairment test is whether a firm can economically enter a given local exchange market. TRO at par. 84. As the FCC itself said, the *actual market evidence* of entry should receive the greatest weight in answering the

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impairment question. TRO at Par.s 458, 510. Market share is exactly the kind of evidence the FCC was talking about.

5. GCI relies on a series of misleading references to the TRO in an attempt to claim that the FCC itself has declared competitive market share irrelevant. GCI's Response to ACS' Proposed Discovery Questions at 3-4. The FCC did not, however, rule that market share evidence is irrelevant. To do so would directly contradict the FCC's own finding that market evidence is the most important input into the impairment analysis. Instead, what the FCC did was to decline to make any particular level of competitive market share lead automatically to a finding of non-impairment. TRO at Par. 115. The FCC's rightful concern was that competitive market share *based on UNEs* might disappear if unbundling stopped. It would be circular to use market share based on UNEs to declare an end to the need for UNEs.

6. But the FCC expressly noted, as GCI acknowledges, that market share *is* relevant when it is *not* based on UNEs. *Id.* This point is extremely important to this case because GCI's market shares in switching and transport for the most part *are not* based on UNEs. Thus, the market share data at the core of ACS' petition and which ACS has sought to supplement through discovery is exactly the kind of market share data the FCC has said *is* relevant and, moreover, should receive great weight in the impairment inquiry.

7. From an economic standpoint, the FCC's emphasis on actual, CLEC provisioned customers is quite cautious and conservative. Even in the absence of competitive market share, there may be empirical cost evidence and theoretical models that could help to determine the presence or absence of competitive impairment. But such evidence can be ambiguous, dependent on model input choices, and distorted by regulatory realities. It is much harder to refute a competitor's factual experience, positive or negative, in a given local

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exchange market. Has a competitor successfully penetrated a market using its own facilities or not? Market shares served over a CLEC's own facilities are the key ingredients to answering that question. GCI's contrary claim that market share data is irrelevant to the impairment inquiry defies common sense, sound economics, and the TRO.

GCI's Market Definition is Incorrect

8. GCI explains its proposed market definition as follows:

> The relevant market for the impairment analysis is the geographic markets relevant to performing the impairment analysis are the geographic area in each of the Anchorage, Fairbanks, and Juneau study areas comprised of the area served by loops accessible at each ACS host switch and those areas served by loops inaccessible at each ACS host switch.

GCI Comments at 5. Assuming that GCI means to define markets narrowly and place loops that are accessible from the ACS host switch into a distinct market from loops that are not accessible from the host switch, GCI's definition is flawed. To begin with, GCI can reach many of the loops not accessible from the host switch from remote switches. Indeed, this is precisely what GCI has done in several cases. Hitz Declaration at Par. 4. Where GCI can economically collocate remotes to reach customers that it cannot reach directly from the host switch, then those customers should not be placed in a separate market from the customers directly accessible from the host. The FCC has clearly counseled against overly narrow market definitions that compromise the available scale and scope of a switch. TRO at Par. 495. GCI's suggestion that the market be defined in terms of accessibility at the host switch is inconsistent with the FCC's admonition.

9. GCI attempts to justify its narrow market definition for switching by referring to the obligation to unbundle *loops* at the central office. GCI Comments at 13-14. It bears

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keeping in mind that at issue here is not unbundling of mass-market loops, but of switching and transport. Impairment must be judged element-by-element. The fact that GCI may be impaired in providing a loop does not mean that it is impaired in providing *switching* for that loop. The FCC did not intend its finding with respect to access to DS0 loops to short-circuit the independent impairment analysis for switching. If GCI can economically use remote collocation to serve loops that are not accessible by GCI from the host, then GCI is not economically impaired in providing switching for those loops. At a minimum, then, the market should be defined as including customers that can be served from the host switch *and* customers that can be served economically through collocated remotes.

10. Even that broader market definition may, however, be too narrow. Some customers that are today inaccessible to GCI, either from the host or from remotes, might be economically served through expansion of GCI's remote facilities. As GCI explains in its comments (pp.19-20), it has over time expanded its network by collocating at remote locations. The relevant question for impairment is whether GCI can economically expand the set of customers to which it has access through further remote collocation. If so, then the fact that GCI today finds certain customers inaccessible is due not to impairment as the FCC defines it, but to the fact that GCI has not yet deployed the necessary facilities. GCI's only response is that additional collocation "may" entail uneconomic costs, and that ACS' cabinets "may" not accommodate the necessary connections. GCI Comments at 22. This is unsupported conjecture that is belied by GCI's past deployment decisions. GCI provides no basis for determining the extent to which additional collocation would be less economic than the remote collocation GCI has already successfully deployed.

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11. It may well be that deployment of collocated remotes would be uneconomic in some locations. But that speculative possibility cannot be glibly leveraged into a blanket determination of impairment that GCI is impaired in providing switching to all customers that today are inaccessible from GCI's facilities. Moreover, the mere fact that additional collocation would impose additional costs on GCI does not satisfy the impairment standard. The question is not whether increased facilities will entail increased costs, but whether those costs make switching uneconomical. GCI has presented no evidence to that effect. Meanwhile, the evidence that is available shows that GCI has been able to collocate remotes successfully when it has wanted to. Accordingly, the switching market should be defined as all customers that are, and economically could be, accessible to GCI either directly from the host switch or through remote collocation. In some cases, there may be customers to which GCI does not and could not economically provide switching. Only with regard to those customers should GCI have access to unbundled switching. In keeping with the FCC's clear preference for minimizing unbundling as a solution, the threshold for finding such impairment should be a rigorous one.

GCI's Proposed Cut-off between Mass-Market and Enterprise Switching is Unreasonably High

12. GCI contends that the cut-off for distinguishing DS0 from enterprise switching should be very high—11 lines in Anchorage, 8 lines in Fairbanks, and 19 lines in Juneau. It is to GCI's commercial advantage to have the cut-off be as high as possible because everything below the line falls into the category of switching that the FCC, in its now-vacated TRO decision, found should presumptively be unbundled. As a threshold matter, the cut-off really

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should not become an issue in this proceeding because the evidence is overwhelming that GCI does not suffer impairment even for mass-market switching. But even if the cut-off for enterprise switching does become relevant, GCI's proposed numbers are much too high.

13. The FCC itself found that in comparatively competitive local exchange markets, the DS0 cut-off should be 4 lines. TRO at par. 497. A signal that GCI's proposals are out of line is that it proposes much higher cutoffs in the most competitive local exchange markets in the country. In other words, GCI seeks to expand switch unbundling obligations in precisely those markets where unbundling should be reduced. But more to the point, GCI's proposed rationale—that the cut-off should reflect the point at which GCI would break even building a T1 connection to the customer—is completely disconnected from the costs of supplying *switching* to those enterprise customers. The cut-off should therefore be no higher than the 4 lines that the FCC has already found to be correct.

GCI is not Impaired in the Absence of Unbundled Transport

14. GCI cannot deny that as a leading facilities-based provider of cable, local, and inter-exchange service, it has significant fiber resources. In fact, GCI provides its own transport for the customers it currently serves. In its response to the RCA's Order Requesting Data, GCI acknowledges its extensive fiber network and the fact that it has deployed transport throughout ACS' service areas. These facilities not only allow GCI to provide itself transport between ACS' central offices, but they also give GCI facilities it can use for transport to ACS' remote switches where GCI has not yet chosen to collocate. Affidavit of Kenneth Sprain, Paragraphs 3, 9.

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Conclusion

15. The evidence available in this proceeding makes a compelling case that GCI suffers no competitive impairment in the absence of unbundled switching or transport. To the contrary, GCI has been a remarkably successful entrant by any standard, and it has accomplished this success using almost entirely its own switching and transport facilities. GCI presents no evidence that it requires unbundled switching or transport to continue this competitive success. GCI's market share is the clearest proof of ability economically to enter local exchange markets over its own facilities, and the artificially narrow market definitions that GCI advocates in this proceeding cannot convert GCI's remarkable success into the economic "impairment" that the law requires.

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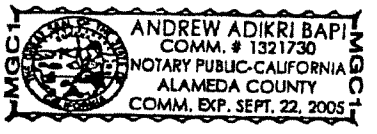
Further Affiant Sayeth Not.

Howard A. Shelanski

Howard A. Shelanski

Subscribed and sworn to before me on this 1st day of April, 2004.



Notary Public
My Commission expires:
SEPT- 22ND 2005

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: Mark Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

In the Matter of the new Requirements of 47 C.F.R. § 51 Related to the FCC Triennial Review Order Interconnection Provisions and Policies	))))	R-03-07

AFFIDAVIT OF KENNETH SPRAIN

Ken Sprain, being first duly sworn, deposes and states as follows:

1. My name is Kenneth Sprain, and I am employed by Alaska Communications Systems ("ACS") as the Senior Vice President of Operations, a position I have held since May 19, 2003. Prior to my employment with ACS, for over 30 years, I served in various management positions at telephone companies, including Southeast District Manager for RCA Alascom, Anchorage District Manager for Alascom, Division Vice President for PTI Communications, Midwest Region Vice President for PTI Communications and CenturyTel, and Vice President for Operations Planning, CenturyTel. During that time, I managed telephone companies in Alaska, Washington, Idaho, Wyoming Nevada, Colorado, Montana, Wisconsin, Minnesota, Iowa, Michigan and Ohio, and was involved in a wide range of regulatory issues before several state commissions.

2. In my professional opinion, GCI could economically gain access to all of ACS' remote switching and line concentrator locations. In order to gain access to some of ACS'

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remote switching locations, GCI would need to establish transport from GCI's switching location to the vicinity of ACS' remote device. Once in the vicinity of the ACS device, GCI would establish a point of interconnection ("POI") with ACS. This POI would be a physical connection to the sub-loop.

3. GCI has numerous options for establishing transport to ACS' remote switching and line concentrator locations. Transport could be provided via GCI's own extensive transport facilities, some of which are described in its Response to RCA Order Requesting Data, or via leased transport facilities of other carriers, including ACS' tariffed services. At the transport termination point in the vicinity of ACS' remote device, GCI would place an interface device of their choosing, to convert from the transport mode to a mode capable of connecting to the physical sub-loop.

4. Once GCI establishes a method of transport to ACS' remote device, ACS would then cross-connect with GCI at this location.

5. In its Response to RCA Order Requesting Data, GCI proposes that ACS make changes to its network to accommodate GCI's own switching facilities. For instance, GCI proposes that ACS bypass the remote switch or DLC by leaving a sufficient number of copper pairs available to GCI to continue providing service on unbundled loops. ACS has already indicated that it was willing to accommodate a similar request in the Prefiled Opposition Testimony of Stephen A. Pratt filed in U-96-89, filed September 29, 2004.[1] Beyond this, to require ACS to construct its plant based on one interconnecting carrier's perceived needs causes ACS to unnecessarily duplicate its own facilities.

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[1] *Id.* at 14.

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6. GCI also suggests that if multiplexing is available at the remote switch or DLC, GCI could utilize enhanced extended links ("EELs") to connect to its own switching facilities. *See* Response of GCI to RCA Order Requesting Data, at 3 (filed March 19, 2004). However, these changes would require ACS to reconfigure its network in a manner that is contrary to principles of good network design. I disagree with the changes that GCI proposes because an efficient network is configured based on the defined Serving Area Concept, which does not envision multiplexing or "muxing" at the DLC location. At the same time, if GCI chooses to establish its own transport facility and "mux" arrangement at the DLC location, ACS is willing to meet them at this location, as noted above.

7. GCI also suggests that ACS deploy DLCs with multi-hosting capability. In fact, ACS has installed DLCs with multi-hosting capability in the locations that GCI identified in its comments. *See* Testimony of Emily Thatcher in R-03-07 at 8-10 (Jan. 12, 2004). Further, ACS has discussed multi-hosting with GCI at some of ACS' sites that were not multi-host capable. It was determined that in order to make the ACS remote sites multi-host capable, ACS would be required to provision GCI's switch, in order to avoid an unintentional corruption of the remote configuration. Because GCI did not want to allow ACS access to the GCI switches in order to provision them in this multi-host environment, GCI made its own choice to accept the original configuration.

8. While GCI has estimated its cost of collocation to access sub-loops in Fairbanks and Juneau, they did not provide a detailed description. GCI's total cost examples for collocation in Fairbanks and Juneau range from $155,809 to $251,194, which translates into a range of approximately $80 per loop investment in Juneau (Mendenhall) to $241 loop investment in Fairbanks (Dale Road). Assuming that GCI's cost estimates are relatively

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accurate (although the amounts include an added 20% "contingency" or "fudge" factor), this range of loop investments/deployments should be economical for GCI. For example, in the Anchorage arbitration docket, ACS has proposed a sub-loop price that is approximately $12 per month less than the proposed loop price. Assuming the difference between the Anchorage proposed loop price and sub-loop price is the same or greater in Fairbanks and Juneau, if GCI leased a sub-loop from ACS in Fairbanks at $12 per month less than the loop price, GCI would recover its relatively small investment on an $80 per loop investment in Juneau in approximately seven months, or in about two years on a $241 per loop investment in Fairbanks, resulting in a $12 per month savings for each such sub-loop for the remaining life of its plant. Although these figures assume that GCI obtains 100% of those customers, this is the same type of analysis that applies to ACS decisions about making investments in plant.

9. GCI's data response demonstrates that it has an extensive transport network. It has self-deployed transport facilities throughout ACS serving areas and between all ACS central offices. This demonstrates that there are no economical or operational barriers to GCI or other carriers self-deploying transport facilities between ACS locations. In addition, AFS has indicated that it also provides transport between four out of five of ACS' main wire centers in Anchorage, as well as both of ACS' primary wire centers in Fairbanks.

10. With regard to High Capacity Loops, GCI's data response demonstrates that it also has an extensive deployment of high capacity loops and is not impaired without access to ACS transport facilities. GCI states in its data response answer to question # 24, "GCI is not currently aware of any limitations with respect to the identified facilities that would affect their use as a replacement for the incumbent's unbundled network element DS3 and/or dark fiber services, as available at each of the customer locations listed in Exhibit GCI-8." Therefore,

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GCI is clearly not impaired without further access to ACS high capacity loops because GCI has not identified any route location in any ACS service area that requires high capacity loops that it cannot self-provision.

Further Affiant Sayeth Not.

Kenneth Sprain

Subscribed and sworn to before me on this 2nd day of April, 2004.

TIFFANY L. DUNN NOTARY PUBLIC STATE OF ALASKA

Notary Public
My Commission expires: 11-3-06

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: Mark Johnson, Chair
Kate Giard
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G. Nanette Thompson

In the Matter of the new Requirements of 47 C.F.R. § 51 Related to the FCC Triennial Review Order Interconnection Provisions and Policies	))))	R-03-07

AFFIDAVIT OF DEBRA D. MORRIS

Debra D. Morris, being first duly sworn, deposes and states as follows:

INTRODUCTION

1. My name is Debra D. Morris, and I am the Plant Assignment Manager for Alaska Communications Systems Group, Inc. ("ACS"). I oversee provisioning all order types on a statewide basis for ACS and other CLECs. I also have worked as the Statewide Repair and Dispatch Manager. In this proceeding, ACS requested that I review the Proposal for Coordinated Batch "Hot Cuts" presented as Exhibit GCI-5 to the Response of GCI to RCA Order Requesting Data, filed by General Communication, Inc. ("GCI") on March 19, 2004 in the above-captioned proceeding. In addition to my personal knowledge of this subject, I developed my conclusions through discussions with Cindy Starett, Network Operations Center General Foreman for the Central Offices ("CO"), and Jeremy Davis, Lead for ACS's

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Alternative Local Exchange Carrier Group, both of whom have day-to-day responsibility over execution of the hot-cut process.

RESPONSE TO GCI'S PROPOSED BATCH HOT CUT PROCESS (QUESTION 20(c))

2. GCI proposes several steps in the batch-cut process. I will address each in turn.

Step 1 – Coordination prior to performing the batch cut.

3. In the current ACS batch cut process, ACS provides GCI with a due date for the conversion, and GCI provisions its own switch on the due date. GCI now proposes as Step 1 in the process that the ACS technician should call the GCI technician on the day of the assigned due date no more than 30 minutes prior to performing each batch cut.[1] According to GCI, this process should take approximately 15 minutes per batch.[2] Although it is important for ACS and GCI to coordinate prior to provisioning batch cuts, ACS opposes and disagrees with GCI's suggestion that the parties engage in a 15 minute telephone conversation several times a day. ACS has been and will continue to upgrade its MARTENS system to facilitate communications between ACS and its CLEC customers related to their service orders. These systems will be superior to, and largely replace, other modes of communication, such as fax and e-mail, that the ACS retail and CLEC customers now use. As ACS and GCI move toward implementing more automated provisioning systems processes, it would be extremely inefficient and counterproductive to add into the automated process numerous required manual tasks, such as time-consuming telephone conversations between GCI and ACS technicians.

4. Further, the addition of several 15 minute telephone conversations to a technician's 8 hour work day would severely decrease the number of conversions completed

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[1] Exhibit GCI-5, ¶ 1.

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per day. ACS allocates 6 minutes per conversion, which equals 10 conversions per hour, or 80 conversions per day, per technician. If an ACS technician were required to spend 15 minutes of telephone time per batch of 10 conversions with a GCI technician, this would add 120 minutes of telephone time per day to the technician's schedule, which would then reduce the available conversion time to 6 hours (the equivalent of 6 batches) per day. GCI's proposal would cause a decrease of 20 actual conversion orders per day, or put differently, a decrease of 25% in the number of conversion orders worked per day.

5. In addition, such a direct line of communication between GCI and ACS technicians would violate the principle of parity, as GCI's request for such access to ACS technician time vastly exceeds what ACS provides to other CLEC customers and to ACS's retail customers.

6. Instead of time-consuming telephone calls before each batch cut, ACS would consider discussing the following alternative with GCI. On the day *before* the provisioning due date, ACS will e-mail to GCI all CO orders scheduled to be provisioned the following day, including all information that GCI will need to confirm (e.g., the telephone number and cable pair assignment for each line.) GCI will then, by return e-mail, confirm or correct the information sent by ACS. Alternatively, GCI could improve its own current process by pre-provisioning their switch with a port option. This would virtually eliminate the need for advance notification from ACS as to when ACS will start to process the order. By pre-provisioning port options, as soon as ACS works the order the order will be effective in the GCI switch. Thus, once GCI receives the completion notification, GCI can test the line. Then,

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[2] *Id.*

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on the day the order is due, within 30 minutes of commencing work on a particular batch, the ACS technicians will fax a listing of the GCI batch order (no more than 10 orders per batch) to notify GCI that the ACS technician will begin work on those lines.

7. As a final matter, GCI has provided excerpts from an operations manual that the parties negotiated and applied to the Fairbanks interconnection agreement as support for its position that some parts of their proposal are not "new tasks."[3] When ACS has referred to the processes in this manual as a means to resolve interconnection dispute issues, GCI has indicated that it never "agreed" to the use of the manual, and has specifically refused to abide by processes in the manual. Since that time, ACS's provisioning processes and GCI's demands have evolved without regard to the terms of the operations manual. GCI's reference to the operations manual here is disingenuous and does not necessarily reflect current practices observed by either ACS or GCI.

Step 2 – Performing the batch cut.

8. GCI proposes that the ACS technician next proceed with the jumper swings, each of which "GCI estimates . . . will take no longer than three minutes per line."[4] This estimate of time is inaccurate and completely unrealistic, as it could never be met.

9. As indicated above, ACS schedules 6 minutes per line for conversions or jumper swings, which is ACS's realistic estimate for the minimum timeframe it will take an ACS technician to provision a single line to consistently meet provisioning due dates. This allocation of 6 minutes per line applies equally to ACS retail customer orders, GCI orders, and all other CLEC orders. Assuming for a moment that it is possible, under ideal conditions, to

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[3] *See* Exhibit GCI-5(a).

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provision 1 line in 3 minutes, GCI's assumption that the technician could complete 2 lines in exactly 6 minutes, and 10 lines in 30 minutes is simply not a realistic goal, considering the many tasks an ACS technician must perform during the course of the day, including network maintenance and repair.

10. ACS does not have frame technicians that are assigned solely to perform this work. By scheduling 10 orders an hour, ACS technicians are able to continuously maintain the frame, work with problem orders, utilize the computer and MARTENS for information, complete Remedy trouble tickets, answer phones, as well as occasionally change out and maintain AML, DAML, loop extenders and line cards, with the latter to include switch changes that may need to be done. Further, assigning additional ACS technicians to work the frame would not significantly speed the hot-cut process because of space constraints in working on the frame, which make it not feasible to have more than two technicians working on a frame at one time. For all of these reasons, it is necessary to schedule a full 6 minutes per hot cut.

Step 3 – Fax notification that order is complete.

11. ACS technicians currently fax notice of completed lines, in batches, within two hours of the conversions. This practice has been in place since 1997, provides timely notification of converted lines, and ACS does not believe that there are legitimate operational reasons why this practice should be changed at this time..

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[4] *Id.* ¶ 2.

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12. GCI's current request that ACS provide the completion fax notification within "30 minutes of the initial coordination"[5] is unrealistic and makes no sense. First, GCI's proposal is internally inconsistent in that it requires that its Step 1 (initial coordination) should be *started* within 30 minutes of commencing provisioning, but yet GCI also wants the orders *completed* within 30 minutes of initial coordination. Even under GCI's proposal for Steps 1 and 2, ACS could virtually never complete an entire batch within 30 minutes of initial coordination. Second, as stated above, 10 loop conversions take an ACS technician approximately 60 minutes to complete. Thus, even if the ACS technician commenced working the order instantaneously after initial coordination, the technician could not fax a completion notification for approximately one hour. Third, GCI and ACS have been operating under a practice where ACS has two hours from the time the work is completed to provide GCI with such notification.

13. There are also other practical problems with GCI's proposal. Each time the technician stops assembly line work to send a fax, it interrupts the flow of work. If ACS is working a handful of orders, ACS can break them down into smaller pieces that are repeatedly done. If an ACS technician is working one order, there is substantial additional walking from one side of the 40-foot frame to the other, walking back to the computer, and then sending the completion fax associated with GCI's proposal. More frequent fax notifications adds inefficiencies and, therefore, cost and delay to the provisioning process.

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[5] Exhibit GCI-5(a) at ¶ 3.

Step 4 – GCI technician tests line.

14. GCI proposes as Step 4 that the GCI technician test and validate the service to confirm the successful completion of the hot cut and that the "ACS technician remain at the collocation site until GCI notifies ACS that testing is complete."[6] GCI estimates that this new step in the process will take 5 minutes per loop,[7] or *50 minutes per batch*, which will nearly double the amount of time it takes to provision a batch (from 60 minutes to 110 minutes). Using GCI's assumption of 3 minutes to provision each loop, this step would nearly *triple* provisioning times (from 30 minutes to 80 minutes). GCI's assertion that it "does not anticipate that this task will add any costs to the process" because it would limit repeat visits to collocation sites is ludicrous. In order to justify doubling (or tripling) the provisioning time of every loop, GCI's argument assumes an error rate of 100 percent, requiring every single loop to be provisioned twice, which simply is not necessary. In reviewing ACS data, I find that in the period from January 1, 2004 through March 31, 2004, ACS processed approximately 17,000 GCI service orders. During this period, GCI opened 336 Remedy trouble tickets for "failed install" situations. Of these 336 trouble tickets, approximately 38% were directly related to a GCI-caused issue, and 31% were related to issues occurring outside the central office provisioning process, and therefore could not be resolved within the constraints of the central office. Thus, of the 336 trouble tickets, approximately 69%, or over 200 trouble tickets, would not be corrected by provisioning each loop twice, as proposed by GCI. Even if the entire number of 336 trouble tickets is compared to the total number of service orders processed during this period, the total number of trouble tickets (including tickets where GCI

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6 *Id.* ¶ 4.

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caused the issue) results in less than 2% percent of the overall GCI orders. Therefore, GCI's proposal addresses less than 1% of the service order activity that GCI generates, and jeopardizes the volume of orders ACS can complete, by adding inefficient time constraints that will reduce the number of orders that can be processed.

15. Further, it is extremely inefficient for ACS to hold an order open until ACS is notified by GCI that the customer has dial-tone prior to closing the order. First, GCI is ordering a facility (a loop without dial-tone) from ACS, not actual dial-tone. Once ACS provides the facility, ACS has fulfilled its order commitment. To make ACS hold orders open until GCI has completed its provisioning and testing of dial-tone, and then wait until GCI sends notification of that fact to ACS, is unreasonable and inconsistent with ACS' obligation to provide the loop without dial-tone facility. In addition, GCI and ACS have already resolved issues associated with failed installs in Exhibit A to GCI and ACS's Processing and Provisioning Interval Metrics Agreement.[8] By adding inefficiencies to the provisioning processes, the agreed-upon provisioning interval metrics and due dates are put at risk.

16. Moreover, again, GCI is requesting to be treated better than all other CLEC customers and ACS retail customers. If upon testing GCI finds a problem, parity demands that GCI utilize Remedy OSS. ACS requires the use of the Remedy System for documentation tracking for problem areas or maintenance purposes for all customers to whom ACS provisions. Without the Remedy System, ACS cannot look for trends or trouble spots within

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[7] *Id.*

[8] [Redacted] ACS Data Response Compliance Filing Pursuant to Order No. 3, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7(1), Exhibit 4 (March 19, 2004).

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the provisioning system, such as the statistics provided here. Utilizing Remedy OSS for trouble reporting creates parity for all carriers. Allowing GCI to bypass the use of the Remedy System puts every other CLEC and ACS's retail customers at a disadvantage.

Step 5 – Rescheduling lines that are not successfully provisioned.

17. GCI proposes that if it is determined that an order has not successfully been completed, "then that order shall be included in the next immediate batch for the service area."[9] Contrary to GCI's claims, this would *not* be "consistent with ACS' and GCI's recent agreement."[10] In fact, GCI and ACS agreed in the Processing and Provisioning Interval Metrics Agreement that "Simple, Complex, and Special Complex Orders that are the subject of a missed Due Date will be given priority processing to reschedule the Order."[11] Thus, an order that is provisioned unsuccessfully will receive priority because it will be assigned a "no dial tone" priority in the repair queue via the Remedy OSS trouble ticket process. "No dial tone" conditions enjoy first priority among all pending repair issues. However, such order will not displace orders already scheduled for No-Dial Tone assessment.

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9 *Id.* ¶ 5.

10 *Id.*

11 [Redacted] ACS Data Response Compliance Filing Pursuant to Order No. 3, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7(1), Exhibit 4 (March 19, 2004).

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RESPONSE TO PROPOSAL FOR NUMBER OF ORDERS TO BE WORKED (QUESTION 20(a))

18. ACS agrees that a maximum of 10 loop conversions will be performed in a batch,[12] and that it will expand this beyond the 10 loop maximum for single orders having more than 10 lines. However, GCI further proposes that there "should be no cap on the number of orders that may be worked in a day."[13] ACS does not put any "caps" on the number of orders that "may" be worked. However, it would be impossible for ACS to guarantee unlimited batch-cuts per day to GCI, considering there is a finite limit on the number of orders ACS technicians are capable of provisioning. These limits are experienced equally by all of ACS's customers, and making such a guarantee only to GCI would violate parity principles.

19. The CO calendars have a set amount of available time (referred to as a "bucket") associated with them. These buckets are completely agnostic and are utilized on a first-come, first-served basis, to allow for parity among all CLEC and ACS retail customers. The size limits of the buckets are established by dividing the time it takes to complete a jumper conversion with the amount of technician hours in the wire center. The number of orders that can be worked is limited only by how many jumpers a technician can run in a day. GCI's concerns regarding the number of orders that ACS can provision is particularly ironic in light of GCI's proposal that the ACS technician stay at the collocation site for at least 30 minutes to verify "completion." GCI's request that ACS provision an unlimited number of orders is completely unreasonable under current conditions.

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[12] Exhibit GCI-5(a), at Question 20(a) (p. 6).

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Further Affiant Sayeth Not.

Debra D. Morris

Subscribed and sworn to before me on this 2nd day of April, 2004.

TIFFANY L. QUINN NOTARY PUBLIC STATE OF ALASKA

Notary Public
My Commission expires: 11-3-16

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13 *Id.*